**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1415/03, 1463/03, 1429/03, 1428/03 (S/S)

Deewan Singh

vs

State of Uttaranchal & others.

Approved for reporting.

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Not approved for reporting

Date of decision 16.02.2004

Initial of Judge

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No.1415 of 2003

Deewan Singh …… Petitioner

Versus

State of Uttaranchal & others ……. Respondents

Writ Petition No. 1463 of 2003 (SS)

Mohd. Khan & 16 others …… Petitioner

Versus

State of Uttaranchal & others ……. Respondents

Writ Petition No.1429 of 2003 (SS)

Pushkar Bhatt & 14 others …….. Petitioner

Versus

State of Uttaranchal & others …… Respondents

Writ Petition No.1428 of 2003 (SS)

Beer Singh & 4 others …… Petitioners

Versus

State of Uttaranchal & others …….. Respondents

Sri M.C. Kandpal, & Sri S.S. Chaudhari Advocate for the petitioners.
Standing Counsel for the respondents.

Dated: 16.02.2004

**Hon'ble Rajesh Tandon J.**

Heard the learned counsel for the parties.

By the present writ petitions the petitioners have prayed for the issues of a writ, order or direction in the nature of certiorari quashing the Government order dated 26.8.1999, which imposes ceiling on dearness allowance payable to the petitioners and for issue of a writ of mandamus for regularisation of the petitioners.

Brief facts giving rise to the present writ petitions are that the petitioners are work charge employees of Public Works Department. The Government vide order dated 26.8.99 imposed ceiling on dearness allowance payable to the petitioner. Relevant paragraph of the said G.O. is quoted below:

fuEu izdkj iquZjhf{kr fd;s tkus dh Jh jkT;iky egksn; lg’kZ Lohd`fr iznku djrs gSaA

| Dza0 | iwoZorh Z osrueku | lagr osrueku dh vf/kdre | LaLrqr iquZjhf{kr osrueku | lagr osrueku dh vf/kdre | vf/kdkfj; ksa ds inuke ftuds } kjk fu/kkZj.k fd;k tk;sxk |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1- | 750&940 v0 vfHk0 | 1700 | 2550&55&2660&60&3200 | | 3200 |
| 2- | 775&1025 3540 | 1700 vf/k0vfHk0 | 2610&60&3150&65&3540 | | 3540 |
| 3- | 825&1200 4400 | 2200 vf/k0 vfHk0 | 2750&70&3900&75&4400 | | 4400 |
| 4- | 950&1500 4590 | 2200 vf/k0 vfHk0 | 3050&75&3950&80&4590 | | 4590 |

5- 975&1600 2500 3200&95&4900
4900 eq0vfHk0Lrj
6- 1200&2400 2500 4000&125&7000
6000 eq0vfHk0Lrj
7- 1400&2300 2500 4500&125&7000
7000 eq0vfHk0Lrj
8- 1600&2660 3000 5000&150&8000
8000 eq0vfHk0Lrj

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Further by order dated 1.2.01 while granting dearness allowance the following ceiling was imposed:

"kk0 la0 5892@99&27&fla&7&88 22@91 fnukad 26-8-99 }kjk fu/kkZfjr lagr osru dh vf/kdre lhek ds vUrZxr gh dk;ZizHkkfjr deZpkfj;ksa dks osru lhfer j[kk tk;sxkA

Similar ceiling was also imposed regarding payment of bonus to the work charge employees. Relevant paragraph of G.O. dated 1.3.2001 is quoted below:

dk;ZizHkkfjr deZpkfj;ksa dks nSfud osru Hkksxh deZpkfj;ksa dh Hkkafr cksul vuqeU; gS vr% dk;ZizHkkfjr deZpkfj;ksa ds fy, ekfld ifjyfC/k;ksa 1200@& izfrekg ekuh tk;sxhA pkgs mudh okLrfod ifjyfC/k;ksa tks Hkh gksa bu deZpkfj;ksa dks ns; cksul dh /kfujkf"k :0 1200 30@30-4 vFkkZr :01181@ iw.kkZfdr gksxhA

The petitioners have submitted that ceiling imposed as mentioned above is in contravention of Articles 14 and 21 of

Constitution of India and the same is liable to be declared as ultra virus to the Constitution of India.

The Division Bench of this Court has passed order on 10.5.2002 in Writ Petition No. 392 (SB) of 2002 to the following effect:

*"Notice on behalf of the opposite parties has been accepted by the Chief Standing Counsel, who prays for and allowed four weeks time to file counter affidavit, list thereafter.*

*In the mean time, the opposite parties shall make payment of salary to the petitioners from the current month ignoring the ceiling prescribed."*

The purpose of dearness allowance is to neturalise increase in the costs of living due to rise in the price. Apex Court in the case of C.V.K.U. Sahakari Mandli vs. G.S. Barot, AIR 1980 SC 31, has defined the purpose of grant of dearness allowance. The observations are quoted below:

*The law thus clear that dearness allowance is intended to neutralize a portion of the increase in the cost of living. Though 100 per cent neutralization is not advisable, as it will lead to inflation, full neutralization may be permissible only in the case of the lowest class of employees. The management is entitled to complain if the neutralization is more than 100 per cent.*

The dearness allowance cannot be clubbed with the pay. Pay is not a bounty but it is a right under Article 21 of the Constitution of India. The petitioners' counsel also drew the attention of the Court towards the Government Order dated 1.1.2000 issued by the State of U.P. by which restriction imposed with regard to ceiling on dearness allowance on the work charge employee have been withdrawn. The Government order reads as under:

v/kksgLrk{kjh dks ;g djus dk funsZ"k gqvk gS fd osru lfefr dh laqLrqfr;ksa ij "kklu }kjk le;d fopkjksijkUr ;g fu.kZ; fy;k x;k gS fd foRrh; fu;e laxzg [k.M &6 ds izLrj 667] 668 o 669 esa dkZHkkfjr vf/k'Bku ls lEcfU/kr fu;qfDr dh O;oLFkk dks lekIr fd;k tk,A vr% jkT;iky egksn; foRrh; fu;e laxzg [k.M &6 ds mDr izLrj 667] 668 o 669 dh O;oLFkk dks rkRdkfyd izHkko ls lekIr fd;s tkus dh Lohd`fr iznku djrs gSA

Clause 668 of Work-charged Established Condition of Employment reads as under:

*668. In all cases previous sanction of the competent authority as laid down in Volume I of the Handbook or in the departmental manuals of orders is necessary which should specify in respect of each appointment (1) the consolidated rate of pay (2) the period of sanction, and (3) the full name (as given in the estimate) of the work*

*and the nature of the duties on which the person engaged would be employed."*

The petitioner has also argued that there cannot be arbitrariness in the salary in as much as any curtailment of pay will amount to unequal treatment as held in the case of Kumari Shrilekha Vidhyarthi etc. vs. State of U.P. & others AIR 1991 SC 537. The Apex Court has observed as under:

"*The preamble of the Constitution of India resolves to secure to all its citizens Justice, Social economic and political and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Direction Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realize the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Art, 14 –non-arbitrariness which is basic rule of law-from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Art.14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different maters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts*

*where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequal"*

In view of the aforesaid facts and circumstances the Government order dated 26.8.1999 so far as it relates to the imposition of ceiling on dearness allowance is bad in the eyes of the law.

So far the regulisation of work charge employees is concerned the State of U.P. has issued a G.O. on 15.10.1997 in respect of the work charge employees of the department, who are working continuously for the last several years. According to G.O. work-charge employees who have rendered continuous satisfactory service of 5 years or more than 5 years till 31st March 1997 shall be

regularised on the post held by them. The relevant clause of the G.O. is mentioned below:

Dk;Z izHkkfjr dkfeZ;ksa ftudh fujUrj laUrks'ktud lsok;sa foHkkx esa fnukad 31-3-1997 dks ikWp o'kZ ;k blls vf/kd gks x;h gksa ,oa vc rd fujUrj dk;Zjr gks rFkk tks odZpktZ ij fu;qDr dj izfrcU/k gsrq tkjh dkfeZd foHkkx ds "kklukns"k la0 1085@dk&1991 fnukafdr 29-8-1991 ds iwoZ ls fu;qDr gks dks miyC/k fu;fer inksa@fjfDr;ksa LFkkbZ ,oa vLFkkbZ nksuks izd`fr ds in lfEefyr gSa dh lhek rd fu;fer dk;Z izHkkfjr vf/k'Bku esa j[kus gsrq ik=

ekuk tk;A bl fu;fer dk;Z izHkkfjr deZpkfj;ksa dks jkT; deZpkfj;ksa dh Hkkafr lHkh lqfo/kk;sa vuqeU; gksa A

The petitioners have stated that they have completed more than 5 years of service up to 31st of March 1997 and they are liable to be regularised.

The petitioners have also relied upon the judgment of Apex Court in Writ Petition (Civil) No. 140 of 1989 Raj Narain vs. State of U.P. The Apex Court has observed as under:

*"We have carefully perused the proposed scheme in regard to work charged employees and we felt that clause 'D' which talks of regularization as per vacancies arising in regular posts on the established, a modification in necessary, it that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work charges employees the cadre strength should be increased by a certain percentage of the work charged employees working over a period of time that may be fixed by*

*the Government so that the pace of regualrisation is accelerated and in not the same as obtaining in the past, For example, if 100 work charges employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place a certain percentage of those employees would certainly be retained and a part of them could be absorbed be increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to*

*year, therefore, becomes necessary because while of the one side the financial difficulties of the state has to be kept in view, on the side the welfare of the workman who have served the State on different projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impression the State Government that if work charged employees have been on the establishment for long period that State should be liberal in the matter of revision of the cadre strength so that the benefit of regularization is available to a reasonably good number of work charged employees who have been associated with State Department for long periods."*

The petitioners have also pleaded reliance on the judgment of Prayag Narain and others vs. State of U.P. and others (1998) 3 UPLBEC 21251. In this case also the petitioners were employed in P.W.D. and were working on the posts of Beldar/Meth. All of them were initially engaged on daily wages and later on engaged on master roll therefore, they had prayed that the respondents be directed to pay equal pay for equal work.

The petitioners have referred the judgment of Apex Court in the case State of Haryana and others vs. Piara Singh and others AIR 1992 SC 2130. It has been held as under:

*"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-says two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job."*

The petitioners are working with the respondent Department since long and they are entitled to be regularised in view of the judgment of Apex Court in the case of State of Haryana vs. Piara Singh (Supra) as under:

*If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to*

*the Rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.*

*So far as the work charges employees and casual labour are concerned, the efforts must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualification, if any, prescribed for the post and subject also to availability of work. If a casual labour is continued for a fairly long spell say two or three years a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalr, we do commend the orders of the government of Haryana (contained in its letter dated 6.4.1990 referred to herein*

*before) both in relation to work charge employees as well as casual labour.*

The petitioner has stated that they have filed their representation for their regularisation in accordance with G.O. dated 15.10.1997 but the respondents have not considered the same.

Suffice it to observe that without entering into the merits of the eligibility consideration, it will be open for the respondents to decide

the case of the petitioners with regard to their regualrisation after considering their suitability, merit and eligibility.

In view of the aforesaid facts and circumstances the Government order dated 26.8.1999 so far as it relates to the imposition of ceiling on dearness allowance requires reconsideration by the respondents in view of the observation made above as well as in view of the Government Order dated 1.1.2000 issued by the State of U.P.

In the mean time respondents are directed to pay salary to the petitioners ignoring the ceiling prescribed in view of the order of Division Bench dated 10.5.2002.

The writ petitions are accordingly allowed. There will be no order as to costs.

**(Rajesh Tandon, J.)**

16.2.2004
*Dhyani